COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The Berkshire Gas Company	)))	D.T.E. 02-56

INITIAL BRIEF OF
THE BERKSHIRE GAS COMPANY

I. PROCEDURAL HISTORY

In accordance with G.L. c. 164, §94A, on September 18, 2002 The Berkshire Gas Company ("Berkshire" or the "Company") filed with the Department of Telecommunications and Energy (the "Department") its Petition for the Approval of a Gas Sales Agreement between The Berkshire Gas Company and EnCana Corporation and Related Agreements (the "Petition"). The Petition sought approval of the Gas Sales Agreement between Berkshire and EnCana Corporation ("EnCana") dated as of August 7, 2002 (the "Sales Agreement"). Two other agreements were included within the Company's filing, namely the NEGM Agency Agreement dated as of August 8, 2002 by and among Northeast Gas Markets LLC ("NEGM") and a number of local distribution companies ("LDCs") including Berkshire (the "Agency Agreement") and a Management Service Agreement dated as of August 8, 2002 by and among NEGM and the same LDCs (the "Services Agreement"). The Company submitted the prepared testimony and schedules of Karen L. Zink, Vice President, in support of the Petition. Finally, the Company filed a Motion for Protective Treatment of Confidential Information for a portion of the Sales Agreement as well as materials relating to the competitive solicitation that resulted in the execution of the Sales Agreement and the related Agency Agreement and Services Agreement.

Pursuant to its duly published notice, the Department conducted a public hearing at its offices on October 24, 2002. The Department allowed the Motion to Intervene submitted by the Division of Energy Resources ("DOER"). The Department conducted an evidentiary hearing on November 6, 2002.

At the evidentiary hearing, the Company presented the affidavit of Ms. Zink wherein she adopted the prepared testimony submitted with the Petition. In addition to the sworn testimony accepted at the hearing, the evidentiary record consists of approximately 45 exhibits, including the Company's initial filing and supporting documentation. The evidentiary record also includes the Company's responses to Information and Record Requests issued by the Department and the DOER. This evidentiary record demonstrates that the Sales Agreement, as well as the related Agency Agreement and Services Agreement, are consistent with the public interest in that the EnCana supply resource is consistent with the Company's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers.

The DOER submitted an Initial Brief on November 8, 2002. The Company's Initial Brief is submitted in accordance with the procedural scheduled established by the Hearing Officer.

II. DESCRIPTION OF THE SALES AGREEMENT AND RELATED SOLICITATION PROCESS

The Sales Agreement provides for a firm gas supply of 1,083 dekatherms ("Dth") per day at the international boundary near Niagara Falls, New York for a term commencing January 15, 2003 and expiring April 1, 2004. The Sales Agreement reflects a competitive pricing term. Exh. BG-2. The Company maintains transportation rights on the Tennessee Gas Pipeline Company system for delivery of such volumes from the Niagara Falls delivery point to the Company's service area. The Agency Agreement and the Services Agreement provide for the joint management of the Sales Agreement and similar sales agreements between other LDCs and EnCana thereby securing substantial cost savings for the benefit of the Company as well as the other LDCs.

Ms. Zink demonstrated that the Sales Agreement is consistent with the portfolio objectives established in the Company's most recent Long Range Forecast and Supply Plan (the "Supply Plan") for the Berkshire service area as submitted to the Department in The Berkshire Gas Company, D.T.E. 02-17 and also compares favorably to the range of alternatives reasonably available to the Company and its customers. Exh. BG-1, pp. 11-12; Exh. BG-13. In the Supply Plan, the Company explained that it had identified a need for a replacement resource to a certain supply contract with Boundary Gas, Inc. ("Boundary") pursuant to which the Company has been receiving Canadian gas supplies since 1991. Boundary is a FERC-regulated consortium of local distribution companies from the northeast United States that was formed in 1980 to facilitate the procurement of incremental supplies of natural gas from Canada. The term of the existing Boundary supply contract expires January 15, 2003. The Company's Supply

Plan recognized that the Company would be completing a collaborative solicitation of bids from competitive suppliers seeking to secure a replacement resource for the Boundary supply on terms most favorable to the Company and its customers. Exh. BG-1, p. 16.

The Company proposes to substitute the EnCana supply resource for the expiring Boundary Agreement. Berkshire, therefore, explained that the addition of the EnCana supply represents a replacement resource, rather than a resource that is incremental to the existing portfolio. The Company demonstrated that the Sales Agreement satisfies the Department's standard set forth in Commonwealth Gas Company, D.P.U. 94-174-A (1996) for the addition of a replacement resource contract. Exh. BG-1, p. 4. The Agency Agreement and the Services Agreement were also demonstrated to be the least cost means to implement the terms and conditions of the Sales Agreement. Exh. BG-1, pp. 14-16.

III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources under Section 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a company must show that the acquisition: (1) is consistent with the company's portfolio objectives; and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract renegotiations. Id.

In establishing that a resource is consistent with a company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, §94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options that were available to the company at the time of the acquisition, as well as with those opportunities that were available to other companies in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDCs' non-price objectives, including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

IV. ANALYSIS

A. The RFP Process

In early 2001, the Boundary customers, including Berkshire, recognized the need to develop and implement a process for securing adequate replacement resources and established the Boundary Renewal Working Group (the "Working Group") in order to identify and implement the necessary actions for securing a competitive replacement gas supply upon the termination of the Boundary contract in January 2003. On

November 21, 2001, the Working Group issued a request for proposals ("RFP") seeking proposals for a replacement supply source. The RFP identified an overall need of between 60,000 and 72,280 Dth per day. The RFP sought firm commitments and proposals for two periods, namely a 14-month proposal and 26-month proposal, i.e. with terms ending March 31, 2004 or March 31, 2005. The RFP noted that Boundary customers, including the Company, were not obligated to enter into any replacement supply contract.

The RFP was issued to a number of suppliers.[1] The Working Group conducted an evaluation of the nine bids that were received in response to the initial RFP. The Working Group determined that one bid was incomplete and therefore such bid was not subject to further evaluation. Exh. BG-1, pp. 9-10; Exh. BG-7; Exh. BG-9. Evaluation of the bids included an analysis of both price and non-price terms including security of supply, bid flexibility and the viability of the prospective supplier. Exh. BG-1, pp. 10-11. The Working Group later recognized that during the course of the solicitation the market for natural gas had changed substantially and that the price of gas had declined substantially since the issuance of the RFP. Accordingly, the Working Group issued a supplemental bid "refresher" request on January 11, 2002. Id. at 11-12. This document, provided to the most attractive bidders, enabled such bidders to update their previous bids to more closely reflect then current market conditions.

The Working Group thereafter analyzed the responses to this supplemental request and ultimately selected PanCanadian Energy Services ("PCES") as the winning

[1] The RFP was issued to Aquila Energy, BP Energy Company, Coral Energy Canada, Inc., Duke Energy, Dynegy, El Paso Merchant Energy Group, Imperial Oil, Mirant, PanCanadian Energy Services, PG&E Natural Energy Group, Reliant Energy Services Canada, Ltd., Sempra Energy Trading, and Williams Energy Marketing and Trading Company. Exh. BG-7.

bidder. Id. at 12. This determination was based upon a comparison of the various bid price terms after a "price standardization" process. The EnCana proposal was determined to be the most favorable alternative in terms of price. Exh. BG-13. The Working Group also evaluated the proposals on several non-price factors, including flexibility, security and viability. Exh. BG-12; Exh. BG-11. EnCana, along with one other bidder, received the highest scores in terms of these non-price factors. Exh. BG-12. Accordingly, the Working Group elected to pursue contractual negotiations with EnCana.

During the course of contract negotiations with PCES, PCES' parent, PanCanadian Energy announced the consummation of a merger and the renaming of the surviving entity as EnCana Corporation. The Working Group negotiated with EnCana in order to secure EnCana's agreement to assume the obligations of PCES reflected in its response to the RFP. Id. at 13. Subsequently, EnCana entered into gas supply agreements with Berkshire and certain other LDC customers from the Working Group.

In sum, the Company demonstrated that the RFP process was fair, open and transparent. The bidding and evaluation processes were clearly described to each bidder. Exh. BG-6. The Company and the Working Group implemented a well-structured solicitation that secured a wide range of bidders, more likely a wider range than would have participated in a Berkshire-only solicitation. Exh. BG-1, p. 14. Potential bidders were able to seek clarification on the evaluation criteria and the RFP process. The "refresher" process was clearly described to potential bidders. Exh. BG-14. Bids were evaluated and the winning proposal selected based upon appropriate criteria that included price and non-price considerations. No bidder objected to the process or asserted that it was fairly excluded from consideration or that its bid was unfairly evaluated. In sum, Berkshire demonstrated that the Sales Agreement compared favorably to the options available for the Company and its customers as well as other regional utilities. Accordingly, the Department should find that the RFP process was open, fair and transparent and approve the RFP process as appropriately conducted.[2]

B. Sales Agreement

Berkshire demonstrated that the Sales Agreement is in the public interest because it contributes to a least-cost resource portfolio consistent with Berkshire's portfolio objectives. First, Berkshire demonstrated that securing a replacement source of supply for the expiring Boundary contract will enable the Company to continue to provide cost and reliability benefits to its customers by diversifying its pipeline base-load supply with a Canadian resource. Berkshire's most recent Forecast and Supply Plan submitted to the Department in docket D.T.E. 02-17 reflected the continuing contribution of Canadian pipeline supplies to the Company's resource portfolio. Exh. BG-1, p. 16. The EnCana supply contributes to the Company's ability to satisfy its various planning standards. The Company included representative volumes in the various dispatch model "runs" submitted with the Forecast and Supply and described its ongoing efforts to secure the EnCana supply. Id. In addition, by securing a portion of its gas supply from western Canada, Berkshire explained that it expects to enhance cost, diversity and

[2] The Company explained that it did not conduct a separate solicitation with respect to the NEGM services given the specialized skills and attractive fee arrangement available through NEGM. The Company explained that it was highly unlikely to be able to secure comparable services and charges. Accordingly, the Department should find that the renewal process with NEGM was appropriate. Exh. DTE 1-8; RR-DTE-2.

stability attributes of its resource portfolio. Finally, Berkshire explained that the term of the Gas Sales Agreement is consistent with the transition period identified by the Department in D.T.E. 98-32. Id. at 17. Accordingly, the Department should find that the Sales Agreement contributes to a least-cost portfolio consistent with the Company's portfolio objectives.

V. DOER CONCERNS

The DOER's Initial Brief recommends that the Department approve the Sales Agreement. DOER In. Br., p. 1. The DOER, however, suggests several issues be considered by the Department in issuing its decision in this proceeding. Generally, DOER's concerns relate to the manner in which the Company communicates with marketers with respect to resource planning. By way of background, the Company has long been diligent in working with marketers to promote the unbundling initiative advanced in D.T.E. 98-32. The Company has implemented a number of means of communicating with marketers and other shareholders, including written correspondence and meetings. Exh. DOES 1-7; Exh. DOER 1-10. Indeed, the Company sought input from marketers on the merits of replacing the Boundary contract and making certain elections with respect to its related transportation rights. Exh. DOER 1-7.

The DOER now suggests that more formal tariff changes be imposed with respect to the means by which the Company communicates with marketers. DOER In. Br., pp. 2-3. As the Company indicated during this proceeding, the Company has no objections to the DOER's proposals as a general matter. Exh. DOER 1-11. The Company does not believe that tariff change is necessary to address the DOER's concerns (indeed, regardless of the outcome of this proceeding, the Company plans to discuss such marketer meetings with the DOER so as to address the concerns raised in the DOER's Initial Brief); however, the Company believes that any such change should be mandated for all LDCs.[3] Id.

VI. CONCLUSION

Berkshire has demonstrated that the execution of the Sales Agreement and the related Agency Agreement and Services Agreement are consistent with the public interest in that the EnCana supply resource is consistent with Berkshire's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers. Accordingly, the Department should approve the Sales Agreement, the Agency Agreement and the Services Agreement and take such other action as may be necessary and appropriate.

Respectfully submitted,

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Dated: November 13, 2002

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[3] The Company notes that such a condition may be difficult to impose in this proceeding as no other gas companies are parties and only KeySpan Energy Delivery-New England and Bay State Gas Company have executed contracts with EnCana that are now before the Department.